



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4812 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION DISSMISSAL

GENERAL INFORMATION

Requestor Name and Address

PHI AIR MEDICAL
PO BOX 60557
LOS ANGELES CA 90060

DWC Claim #:
Injured Employee:
Date of Injury:
Employer Name:
Insurance Carrier #:

Respondent Name

XL SPECIALTY INSURANCE CO

Carrier's Austin Representative Box

Box Number 19

MFDR Tracking Number

M4-12-1972-01

MFDR Date Received

February 8th, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "PHI Air Medical's charges are being paid subject to a Workers Compensation ('Fee Schedule') amount or by a usual and reasonable fee based on faulty data, and should have been paid in full. This is because the statute and regulation limiting payment to the fee schedule amount, and the fee schedule itself, do not apply to air ambulance carriers due to federal preemption under federal aviation law..."

Amount in Dispute: \$12,681.30

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "...Respondent requests that a Findings and Decision be issued which states that no additional reimbursement is owed as Requestor was correctly paid in accordance with the Texas labor Code and the Division's fee guidelines."

Response Submitted by: Downs-Stanford, PC; 2001 Bryan Street, Suite 4000; Dallas TX 75201

FINDINGS

Background

1. 28 Texas Administrative Code §133.307, effective May 25, 2008 33 TexReg 3954, sets out the procedures for resolving a medical fee dispute.
2. Office of the Attorney General(OAG) opinion letter GA-0684 dated November 20, 2008 addresses whether the federal Airline Deregulation Act(ADA) preempts the state statute and regulations authorizing an EMS subscription program as applied to air ambulances

Issues

1. Is the requestor an interstate air ambulance carrier?
2. Does the Federal Aviation Act, in particular the Airline Deregulation Act of 1978 section 41713 of Title 49 U.S.C.A., preempt the state statutes concerning air ambulance services?
3. Does the Division of Workers' Compensation have jurisdiction over disputes involving interstate air ambulance services?

Findings

1. The requestor billed ambulance codes A0431 defined as "Ambulance service, conventional air services, transport, one way (rotary wing)" and A0436 defined as "Rotary wing air mileage, per statute mile" for air ambulance service from Caldwell County in Lockhart, Texas to Brackenridge Hospital in Austin, Texas. The requestor, PHI Air Medical, submitted Air Carrier Certificate number HEEA617E which certifies that PHI has "met the requirements of the Federal Aviation Act of 1958....and is hereby authorized to operate as an air carrier in accordance with said Act.....". This supports the requestor as an interstate carrier providing intrastate services.
2. 49 USC Section 41713(b)(1) states that "... a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart." In opinion number GA-0684, dated November 20, 2008, the Texas Attorney General concluded that 49 USC Section 41713 preempted certain provisions of the Texas Health and Safety Code and Texas Administrative Code "to the extent these provisions relate to rates charged by air carriers providing air ambulance services." The United States Supreme Court has held that: "To ensure that the states could not undo federal deregulation with regulation of their own, the ADA (Airline Deregulation Act of 1978) included a preemption provision, prohibiting the States from enforcing any law 'relating to rates, routes or services of any air carrier'." *Morales v. Tran World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct 2031 (1992). Accordingly, the Division finds that 49 USC Section 41713 preempts provisions of the Texas Labor Code and Title 28 Texas Administrative Code Chapter 134.203(d) relating to the price of air transportation furnished to an injured worker by an interstate air carrier under that federal law.
3. Per 28 Texas Administrative Code §133.307(a)(3), "...the role of the Division of Workers' Compensation (Division) is to adjudicate the payment, given the relevant statutory provisions and Division rules." Insofar as adjudicating the fees for the disputed services would involve enforcing a law, regulation, or other provision related to the price of air transportation provided by an interstate carrier, the Division finds that this dispute is not under the jurisdiction of the Division of Workers' Compensation and is therefore not eligible for medical fee dispute resolution under §133.307.

Conclusion

The Division concludes that it does not have jurisdiction over disputes involving fees for interstate air ambulance carriers. The dispute is hereby dismissed for good cause pursuant to 28 Texas Administrative Code §133.307(e)(3)(J).

DISMISSAL

The Division has determined that it does not have jurisdiction over this dispute. The request for medical fee dispute resolution is hereby dismissed.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

July 9, 2012

Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. Texas Administrative Code §133.307(f) states: "A party to a medical fee dispute may seek review of the MDR decision or **dismissal** [emphasis added]." A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A

request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.